

**\*\* E-FILED August 10, 2012 \*\***

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BERNARD PICOT and  
PAUL DAVID MANOS,

Plaintiff,

vs.

DEAN D. WESTON and  
DOES 1 through 15, inclusive,

Defendants.

Case No.C-12-01939 EJD

STIPULATED PROTECTIVE ORDER  
FOR LITIGATION INVOLVING  
PATENTS, HIGHLY SENSITIVE  
CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS  
**(MODIFIED BY THE COURT)**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,

1 that this Stipulated Protective Order does not entitle them to file confidential information under  
 2 seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed  
 3 and the standards that will be applied when a party seeks permission from the court to file material  
 4 under seal.

## 5 2. DEFINITIONS

6 2.1. Challenging Party: a Party or Non-Party that challenges the designation of information or  
 7 items under this Order.

8 2.2. "CONFIDENTIAL" Information or Items: information (regardless of how it is generated,  
 9 stored or maintained) or tangible things that qualify for protection under Federal Rule of  
 10 Civil Procedure 26(c).

11 2.3. Counsel (without qualifier): Outside Counsel of Record and Independent Outside Counsel  
 12 (as well as their support staff).

13 2.4. Designating Party: a Party or Non-Party that designates information or items that it  
 14 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY  
 15 CONFIDENTIAL – ATTORNEYS' EYES ONLY" [~~Optional: or "HIGHLY~~  
 16 ~~CONFIDENTIAL – SOURCE CODE"~~].

17 2.5. Disclosure or Discovery Material: all items or information, regardless of the medium or  
 18 manner in which it is generated, stored, or maintained (including, among other things,  
 19 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
 20 responses to discovery in this matter.

21 2.6. Expert: a person with specialized knowledge or experience in a matter pertinent to the  
 22 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
 23 or as a consultant in this action, (2) is not a past or current employee of a Party or of a  
 24 Party's competitor, and (3) at the time of retention, is not anticipated to become an  
 25 employee of a Party or of a Party's competitor.

26 2.7. "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:  
 27 extremely sensitive "Confidential Information or Items," disclosure of which to another  
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1 Party or Non-Party would create a substantial risk of serious harm that could not be  
2 avoided by less restrictive means.

3 2.8. Independent Outside Counsel: Outside Counsel retained by a party to the litigation who are  
4 not counsel of record in the litigation.

5 2.9. Non-Party: any natural person, partnership, corporation, association, or other legal entity  
6 not named as a Party to this action.

7 2.10. Outside Counsel of Record: attorneys who are not employees of a party to this  
8 action but are retained to represent or advise a party to this action and have appeared in this  
9 action on behalf of that party or are affiliated with a law firm which has appeared on behalf  
10 of that party.

11 2.11. Party: any party to this action, including all of its officers, directors, employees,  
12 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13 2.12. Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
14 Material in this action.

15 2.13. Professional Vendors: persons or entities that provide litigation support services  
16 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
17 organizing, storing, or retrieving data in any form or medium) and their employees and  
18 subcontractors.

19 2.14. Protected Material: any Disclosure or Discovery Material that is designated as  
20 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

21 ~~[Optional: or as "HIGHLY CONFIDENTIAL – SOURCE CODE."]~~

22 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
23 Producing Party.

### 24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected Material  
26 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
27 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
28 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover the following  
2 information: (a) any information that is in the public domain at the time of disclosure to a  
3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
4 result of publication not involving a violation of this Order, including becoming part of the public  
5 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
6 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
7 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
8 of Protected Material at trial shall be governed by a separate agreement or order.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
11 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
12 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
13 defenses in this action, with or without prejudice; and (2) final judgment herein after the  
14 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
15 including the time limits for filing any motions or applications for extension of time pursuant to  
16 applicable law. **For a period of six months after final disposition of this litigation, this court will retain**  
17 **jurisdiction to enforce the terms of this order.**

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
20 Party that designates information or items for protection under this Order must take care to  
21 limit any such designation to specific material that qualifies under the appropriate  
22 standards. To the extent it is practical to do so, the Designating Party must designate for  
23 protection only those parts of material, documents, items, or oral or written  
24 communications that qualify – so that other portions of the material, documents, items, or  
25 communications for which protection is not warranted are not swept unjustifiably within  
26 the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
28 are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to

unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" ~~[Optional: or "HIGHLY CONFIDENTIAL – SOURCE CODE"]~~ to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the

1 specified documents, the Producing Party must affix the appropriate legend  
2 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
3 ONLY” [~~Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”~~]) to each  
4 page that contains Protected Material. If only a portion or portions of the material on  
5 a page qualifies for protection, the Producing Party also must clearly identify the  
6 protected portion(s) (e.g., by making appropriate markings in the margins) and must  
7 specify, for each portion, the level of protection being asserted.

8 (b) For testimony given in deposition or in other pretrial or trial proceedings,  
9 that the Designating Party identify on the record, before the close of the deposition,  
10 hearing, or other proceeding, all protected testimony and specify the level of  
11 protection being asserted. When it is impractical to identify separately each portion  
12 of testimony that is entitled to protection and it appears that substantial portions of  
13 the testimony may qualify for protection, the Designating Party may invoke on the  
14 record (before the deposition, hearing, or other proceeding is concluded) a right to  
15 have up to 21 days to identify the specific portions of the testimony as to which  
16 protection is sought and to specify the level of protection being asserted. Only those  
17 portions of the testimony that are appropriately designated for protection within the  
18 21 days shall be covered by the provisions of this Stipulated Protective Order.  
19 Alternatively, a Designating Party may specify, at the deposition or up to 21 days  
20 afterwards if that period is properly invoked, that the entire transcript shall be  
21 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
22 EYES ONLY.”

23 Parties shall give the other parties notice if they reasonably expect a  
24 deposition, hearing or other proceeding to include Protected Material so that the  
25 other parties can ensure that only authorized individuals who have signed the  
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
27 proceedings. The use of a document as an exhibit at a deposition shall not in any  
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1 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
2 ATTORNEYS’ EYES ONLY.”

3 Transcripts containing Protected Material shall have an obvious legend on  
4 the title page that the transcript contains Protected Material, and the title page shall  
5 be followed by a list of all pages (including line numbers as appropriate) that have  
6 been designated as Protected Material and the level of protection being asserted by  
7 the Designating Party. The Designating Party shall inform the court reporter of these  
8 requirements. Any transcript that is prepared before the expiration of a 21-day  
9 period for designation shall be treated during that period as if it had been designated  
10 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
11 otherwise agreed. After the expiration of that period, the transcript shall be treated  
12 only as actually designated.

13 (c) For information produced in some form other than documentary and for  
14 any other tangible items, that the Producing Party affix in a prominent place on the  
15 exterior of the container or containers in which the information or item is stored the  
16 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
17 EYES ONLY” [~~Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”~~]. If  
18 only a portion or portions of the information or item warrant protection, the  
19 Producing Party, to the extent practicable, shall identify the protected portion(s) and  
20 specify the level of protection being asserted.

21 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
22 to designate qualified information or items does not, standing alone, waive the Designating  
23 Party’s right to secure protection under this Order for such material. Upon timely  
24 correction of a designation, the Receiving Party must make reasonable efforts to assure that  
25 the material is treated in accordance with the provisions of this Order.

26 5.4. Materials to be designated “CONFIDENTIAL” but not “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Materials disclosed that fall within  
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the following described categories shall be designated as “CONFIDENTIAL” but not as  
 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY:”

HIGHLY

- A. Documents, irrespective of the source, that disclose any part of the technology purchased by HMR;
- B. The HMR asset purchase agreement and all related materials and correspondence;
- C. The IBKE license agreement and all related materials and correspondence; and
- D. Documents and materials disclosed by HMR pursuant to its Tolling Agreement with David Manos, Bernard Picot, and others.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has



engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3. Judicial Intervention. ~~If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.<sup>1</sup> Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.~~

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to ~~file a motion~~ <sup>seek relief</sup> to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

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<sup>1</sup> ~~Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the Designating Party.~~

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2       6.3 Judicial Intervention. If the Parties cannot resolve a challenge after complying with the  
3 meet and confer requirements above, the parties shall file a Discovery Dispute Joint Report  
4 (“DDJR”), pursuant to the undersigned’s Standing Order re Civil Discovery Disputes. The DDJR  
5 shall affirm that the above meet and confer requirements have been satisfied. The DDJR must be  
6 filed within 5 business days after the conclusion of the meet and confer sessions (or 5 business days  
7 after reaching impasse as to a particular issue). In no event may a DDJR be filed later than 7 days  
8 after the discovery cut-off date(s) as prescribed in Civil L.R. 37-3. Failure by the Designating Party  
9 to defend its confidentiality designation(s) through the DDJR shall automatically waive the  
10 confidentiality designation for each challenged designation.  
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7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner<sup>2</sup> that ensures that access is limited to the persons authorized under this Order.

7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including Independent Outside Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the court and its personnel;

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<sup>2</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

1 (e) court reporters and their staff, professional jury or trial consultants, and  
2 Professional Vendors to whom disclosure is reasonably necessary for this litigation  
3 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
4 A);

5 (f) during their depositions, witnesses in the action to whom disclosure is  
6 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
7 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
8 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
9 depositions that reveal Protected Material must be separately bound by the court  
10 reporter and may not be disclosed to anyone except as permitted under this  
11 Stipulated Protective Order.

12 (g) the author or recipient of a document containing the information or a  
13 custodian or other person who otherwise possessed or knew the information.

14 7.3. Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
15 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
16 writing by the Designating Party, a Receiving Party may disclose any information or item  
17 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

18 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
19 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
20 disclose the information for this litigation and who have signed the  
21 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit  
22 A;

23 (b) Designated Independent Outside Counsel of the Receiving Party (1) who  
24 has no involvement in competitive decision-making, (2) to whom disclosure is  
25 reasonably necessary for this litigation, (3) who has signed the “Acknowledgment  
26 and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set  
27 forth in paragraph 7.4(a)(1), below, have been followed];  
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(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants,<sup>3</sup> and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4. Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated Independent Outside Counsel or Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated Independent Outside Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated Independent Outside Counsel and the city and state of his or her residence, and (2) describes the Designated Independent Outside Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if Independent Outside Counsel is involved, or may become involved, in any competitive decision-making.

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<sup>3</sup> *Alternative:* The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored Undertaking for mock jurors to sign.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>4</sup> and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.<sup>5</sup>

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated Independent Outside Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the

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<sup>4</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

<sup>5</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated Independent Outside Counsel or the Expert may ~~file a motion as provided in Civil Local Rule 7~~ ~~Civil Discovery Disputes. Any Discovery Dispute Joint Report filed pursuant to the~~ ~~(and in compliance with Civil Local Rule 79.5 and General Order 62, if applicable)~~ ~~Standiong Order~~ ~~seeking permission from the court to do so. Any such motion~~ must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated Independent Outside Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such ~~Report~~ ~~motion~~ must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated Outside Independent Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated Independent Outside Counsel or Expert.

#### 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:



1 (a) promptly notify in writing the Designating Party. Such notification shall include  
2 a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
4 the other litigation that some or all of the material covered by the subpoena or order is subject to  
5 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
7 Designating Party whose Protected Material may be affected.<sup>6</sup>

8 If the Designating Party timely seeks a protective order, the Party served with the  
9 subpoena or court order shall not produce any information designated in this action as  
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
11 determination by the court from which the subpoena or order issued, unless the Party has obtained  
12 the Designating Party’s permission. The Designating Party shall bear the burden and expense of  
13 seeking protection in that court of its confidential material – and nothing in these provisions should  
14 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
15 directive from another court.

#### 16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS 17 LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-  
19 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this  
21 litigation is protected by the remedies and relief provided by this Order. Nothing in these  
22 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to produce  
24 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
25 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

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27 <sup>6</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its  
confidentiality interests in the court from which the subpoena or order issued.

1                   1. promptly notify in writing the Requesting Party and the Non-Party that some  
2 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

3                   2. promptly provide the Non-Party with a copy of the Stipulated Protective  
4 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
5 the information requested; and

6                   3. make the information requested available for inspection by the Non-Party.

7                   (c) If the Non-Party fails to object or seek a protective order from this court  
8 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
9 produce the Non-Party's confidential information responsive to the discovery request. If the Non-  
10 Party timely seeks a protective order, the Receiving Party shall not produce any information in its  
11 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
12 determination by the court.<sup>7</sup> Absent a court order to the contrary, the Non-Party shall bear the  
13 burden and expense of seeking protection in this court of its Protected Material. See Paragraph 14.

#### 14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15                   If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this Stipulated  
17 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
18 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
19 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made  
20 of all the terms of this Order, and (d) request such person or persons to execute the  
21 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED 23 MATERIAL

24                   When a Producing Party gives notice to Receiving Parties that certain inadvertently  
25 produced material is subject to a claim of privilege or other protection, the obligations of the

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27 <sup>7</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).<sup>8</sup> This  
 2 provision is not intended to modify whatever procedure may be established in an e-discovery order  
 3 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence  
 4 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
 5 communication or information covered by the attorney-client privilege or work product protection,  
 6 the parties may incorporate their agreement in the stipulated protective order submitted to the  
 7 court.

## 8 12. MISCELLANEOUS

9 12.1. Right to Further Relief. Nothing in this Order abridges the right of any  
 10 person to seek its modification by the court in the future.

11 12.2. Right to Assert Other Objections. By stipulating to the entry of this  
 12 Protective Order no Party waives any right it otherwise would have to object to disclosing  
 13 or producing any information or item on any ground not addressed in this Stipulated  
 14 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
 15 evidence of any of the material covered by this Protective Order.

16 12.3. Filing Protected Material. Without written permission from the Designating  
 17 Party or a court order secured after appropriate notice to all interested persons, a Party may  
 18 not file in the public record in this action any Protected Material. A Party that seeks to file  
 19 under seal any Protected Material must comply with Civil Local Rule 79-5 and General  
 20 Order 62. Protected Material may only be filed under seal pursuant to a court order

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21 <sup>8</sup> *Alternative:* The parties may agree that the recipient of an inadvertent production may not  
 22 “sequester” or in any way use the document(s) pending resolution of a challenge to the claim of  
 23 privilege or other protection to the extent it would be otherwise allowed by Federal Rule of Civil  
 24 Procedure 26(b)(5)(B) as amended in 2006. This could include a restriction against “presenting”  
 the document(s) to the court to challenge the privilege claim as may otherwise be allowed under  
 Rule 26(b)(5)(B) subject to ethical obligations.

25 An alternate provision could state: “If information is produced in discovery that is subject to a  
 26 claim of privilege or of protection as trial-preparation material, the party making the claim may  
 27 notify any party that received the information of the claim and the basis for it. After being notified,  
 28 a party must promptly return or destroy the specified information and any copies it has and may not  
 sequester, use or disclose the information until the claim is resolved. This includes a restriction  
 against presenting the information to the court for a determination of the claim.”

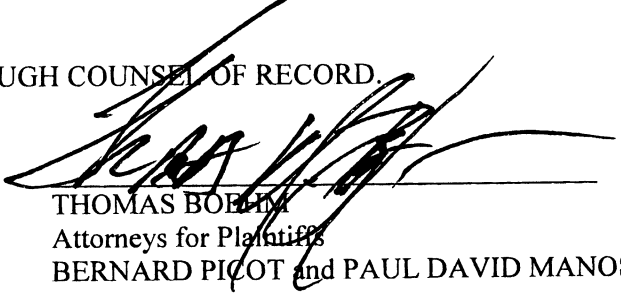
authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

### 13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 7-20-2012

  
THOMAS BOEHM  
Attorneys for Plaintiffs  
BERNARD PICOT and PAUL DAVID MANOS

14. In the event of any discovery or disclosure dispute, the parties and any affected non-parties shall comply with the undersigned's Standing Order re: Civil Discovery Disputes.

1 DATED:


7/20/12

DAVID H. SCHWARTZ  
Attorneys for Defendant

2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3 DATED:

August 10, 2012

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~~EDWARD J. DAVILA~~ HOWARD R. LLOYD  
United States District/Magistrate Judge

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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, DEAN D. WESTON, of 3594 Lakeshore Drive, Waterford, MI 48329, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_, 2012, in the case of *Bernard Picot and Paul David Manos v. Dean D. Weston*, Case No. C-12-01939 EJD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint DAVID H. SCHWARTZ, LAW OFFICES OF DAVID H. SCHWARTZ, 601 California Street, Suite 1800, San Francisco, CA 94108, (415) 399-9301, as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: 7-20-12

City and State where sworn and signed: Clinton Twp. Mich. 48110

Printed name: Dean D Weston  
DEAN D. WESTON

Signature: [Handwritten Signature]

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, WILLIAM DOBREFF, of DOBREFF & DOBREFF, 31912 Mound Road, Warren, MI 48092, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_, 2012, in the case of *Bernard Picot and Paul David Manos v. Dean D. Weston*, Case No. C-12-01939 EJD. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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Date: 7/20/12

City and State where sworn and signed: Clinton Twp Michigan

Printed name: William Dobreff

WILLIAM DOBREFF

Signature: [Signature]